

In the Matter of Correction Major, Department of Corrections
CSC Docket No. 2012-1035
(Civil Service Commission, decided October 5, 2011)

The Department of Corrections (DOC) requests the creation of the title of Correction Major to consolidate comparable functions performed by existing custody supervisory staff in the titles of Correction Captain, Director of Custody Operations 1 and Director of Custody Operations 2.¹

By way of background, the DOC conducted an assessment of its utilization of the Correction Captain, Director of Custody Operations 1 and Director of Custody Operations 2 titles and determined that in order to promote efficiency and streamline operations, it would be beneficial to combine the functions of these titles into one common career service title of Correction Major. In support of its request to the Division of State and Local Operations (SLO) to consolidate these titles, the DOC explained that the job functions of the Director of Custody Operations titles and the Correction Captain title are comparable and have related duties. For example, each of the titles are responsible for the supervision of the custody workforce, maintaining discipline among inmates, assisting with investigations, overseeing training programs, and directing the overall operations of the custody unit. The DOC noted that some of the responsibilities are specific to each title. For example, the Directors of Custody Operations conduct grievance hearings and prepare budget requests, but incumbents in the Correction Captain title are not responsible for these duties. Further, it noted that Correction Captains give direction to Correction Lieutenants and have more direct contact with employees and inmates than a Director of Custody Operations. In addition to some new responsibilities not covered in the job specifications for these titles, such as duties associated with the creation of a “Central Operational Desk” to handle emergency situations, the DOC indicated that it would combine the few extraneous duties of the titles, add the new responsibilities, and create one new title that would accommodate all of its needs. The DOC noted that creation of the Correction Major title would allow it to consolidate its resources and reduce its number of positions by 20 full-time equivalents (FTEs).

In support of its request to SLO, the DOC submitted a reorganizational proposal detailing its current organizational structure and its proposed organizational structure. Currently, at the facility level, the organizational structure of the DOC is to have two Assistant Superintendents, one Director of Custody Operations, an Associate Administrator, and an Administrator. In its

¹ The difference between the Director of Custody Operations titles is that a Director of Custody Operations 1 supervises the custody workforce in a Class 1 institution housing over 1,000 inmates or a Class 2 institution housing between 300 and 1000 inmates whereas a Director of Custody Operations 2 supervises the custody workforce in a Class 3 institution housing fewer than 300 inmates.

current organizational structure, the Director of Custody Operations has responsibility for the overall custody function at each facility. Incumbents do such things as hold grievance hearings, sign disciplinary actions, and assist in the budget process. Conversely, Correction Captains are typically assigned to a distinct area of supervision in a facility. For example, a Correction Captain may have supervision over a housing unit or a particular security area and they directly supervise Correction Lieutenants and the day-to-day operations. With the exception of the Mid-State Correctional Facility, each facility is assigned one Director of Custody Operations and three to four Correction Captains. Under its current chain of command, Correction Captains report to the Director of Custody Operations. In turn, the Director of Custody Operations reports to the Administrator, Associate Administrator, or an Assistant Superintendent, depending on the availability of that person and the facility.

In its proposed organizational structure, each facility would have two Assistant Superintendents, two Correction Majors, one Associate Administrator, and one Administrator. The DOC explains that this structure would divide the oversight of custody operations between the two Correction Majors – a Correction Major of Security and a Correction Major of Administration. Further, the Correction Captains assigned to the Special Operations Group, Central Transportation, and Training units would be converted to Correction Majors. Additionally, the DOC indicated that it was in the process of establishing a new “Central Operations Desk” that would be staffed with six Correction Majors and three “regional” Correction Majors to provide assistance to the facilities in their assigned regions. The DOC states that this proposed structure would ultimately result in a reduction of 20 FTEs. Specifically, it notes that it is currently budgeted for 12 Directors of Custody Operations and 46 Correction Captains. However, at this time, only 6 Director of Custody Operations and 40 Correction Captain positions are filled. Under its proposed plan, the DOC states that it would only require a total of 38 FTE Correction Major positions. In short, the DOC maintained that creation of the Correction Major title would allow it to function more effectively through the expansion of duties at the facility level and through the creation of the Central Operations Desk and regional positions.²

In response, the New Jersey Law Enforcement Commanding Officers Association (NJLECOA), represented by Mario A. Iavicoli, Esq., objects to the

² In order to implement this proposal, all permanent Directors of Custody Operations and Correction Captains would be laterally appointed to Correction Major with the retention of existing status. The Correction Major title would be structured and compensated at a single rate of \$116,000 and assigned to salary range 99. Additionally, incumbents who are laterally appointed whose salaries are over the salary of Correction Major would be red-circled to remain at their current salary until such time as the title’s salary exceeds their present one. Once the incumbents have been laterally appointed to Correction Major, the titles of Director of Custody Operations 1, Director of Custody Operations 2, and Correction Captain would be inactivated.

abolishment of the Director of Custody Operations titles and the Correction Captain title. NJLECOA explains that the Directors of Custody Operations are commonly referred to as the rank of “Chief” and are the highest ranking law enforcement officers in the DOC and the Correction Captains are the second highest ranking law enforcement officers in the DOC. In support of its objections, NJLECOA asserts that DOC management discussed abolishing the “Chief” title in response to its efforts to permit incumbents in the Director of Custody Operations titles to organize into a union and collectively bargain in 2009. In this regard, it maintains that the “Chiefs” had been “economically abused” by the DOC for a number of years and their petition to be certified for union membership was vigorously opposed by the DOC. Moreover, even though the Public Employment Relations Commission (PERC) certified the “Chiefs” as a union in October 2009, NJLECOA states that it still does not have a contract with the DOC. The NJLECOA opines that this evidences that the DOC is retaliating against the “Chiefs” and is attempting to destroy the union by abolishing the “Chief” and Correction Captain titles. Further, it asserts that the DOC has refused to make appointments from existing Director of Custody Operations eligible lists.³ Rather, NJLECOA states that the DOC has assigned Correction Captains duties as “Acting Chief” in violation of Civil Service law and rules even though unfilled vacancies exist.

The NJLECOA argues that it is incumbent on the DOC to prove that the need for the abolition of the Director of Custody Operations and Correction Captain titles is for economy and efficiency. Even though it does not have the obligation to disprove the economy and efficiency, NJLECOA contends that the reorganization proposal does not promote efficiency and in fact, will cause unsafe conditions and will result in confusion and a greater expenditure of monies. Moreover, it states that the present organizational structure has functioned effectively and safely for more than “200 years,” since every paramilitary organization in the world has a Chief or General who is ultimately responsible for the operation of the organization. In fact, it states that it is unsafe and inefficient to have a situation where there is no law enforcement officer who has the final authority in making a final decision, such as a “Chief.” Thus, NJLECOA argues that the DOC must justify how the new organizational mode is more efficient, given that no other paramilitary organization uses a model where there is no ultimate commanding officer. In this regard, it questions who would become the leader of the institution in the chain of command when both Correction Majors are out of the prison. Further, even with two Correction Majors in place, NJLECOA questions how final custody decisions would be made. It states that the Administrator, Associate Administrator, and Assistant Superintendents (civilian employees) cannot make custody decisions as they are not permitted to do so by law.

³ According to agency records, there are three current lists for Director of Custody Operations 1 (PS7785I) (PS0315I) and (PS4781I). There are no active lists for Director of Custody Operations 2.

The NJLECOA presents that the DOC has not created a job specification⁴ for Correction Major delineating the duties and responsibilities of an incumbent in the title. Additionally, it asserts that *N.J.A.C. 4A:3-3.1* to *N.J.A.C. 4A:3-3.9* require notice to be given to each and every “Chief” and Correction Captain before a reclassification can occur and the incumbents have a right to challenge a reclassification. The NJLECOA reiterates that the DOC is attempting to break its collective bargaining agreement because it seeks to compensate the Correction Majors at \$116,000 for a title and rank higher than Correction Captain, with allegedly more responsibilities, at less pay. Thus, it maintains that the DOC is creating a salary compression situation between Correction Lieutenants and Correction Majors. It also states that Correction Lieutenants will refuse to accept the promotion to Correction Major because it will mean a pay cut. Given the issues present in this matter, NJLECOA argues that the Civil Service Commission (Commission) cannot decide this issue on the papers submitted since credibility issues are involved. Therefore, NJLECOA requests that this matter be submitted to the Office of Administrative Law (OAL) so that a plenary hearing may be conducted in this matter.

In supplemental submissions, the NJLECOA states that the DOC is seeking to abolish the Director of Custody Operations and Correction Captain titles and create the Correction Major title to relegate the Correction Major to non-union status at significantly less pay. It notes that the Correction Major title is to be set at the “single salary” amount of \$116,000 and will not be assigned a “range” designation. In this regard, NJLECOA underscores that the New Jersey State Parole Board compensates its “Captain equivalent title,” which is represented by NJLECOA, at \$136,000, and there is no plan seeking the abolishment of that title. Further, it notes that eight of the Correction Majors will be assigned to Central Office and will not be supervising any employees. Further, NJLECOA argues that the DOC is seeking to avoid its collective bargaining agreement with the Correction Captains and the “Chiefs” and to destroy the NJLECOA. In short, the NJLECOA maintains that these examples provide further evidence of the DOC’s union animus.

Senator Loretta Weinberg, District 37, Assemblyman Gordon M. Johnson, District 37, Assemblywoman Valerie Vainieri Huttel, District 37, and Assemblywoman Connie Wagner, District 38, present that they have numerous concerns about what the planned title consolidation will accomplish as well as its intent. First, they state that the consolidation of the titles represents breaking down a wall between the operational aspects of prison and inmate custody and the security and direct contact and handling of inmates. Additionally, they note that the potential cost savings of the plan has never been fully articulated. Significantly, these legislators state that the creation of Correction Major will eliminate 20 full time employees who are represented by a collective bargaining unit and fall within

⁴ SLO has developed a job specification for Correction Major.

the protections of the Civil Service system. Thus, they question whether the creation of the Correction Major title is an “end run” around the collective bargaining process that seeks to eliminate unionized positions. In this regard, the legislators state that this type of title swapping has been found to be in violation of federal labor law and collective bargaining case law. Therefore, they request that these concerns be taken into consideration when considering the approval of this matter.

Joseph Polyi, a Correction Captain, submitted a letter of objection concerning this matter. In pertinent part, Captain Polyi states that the reorganization would be damaging since the current organizational structure already is fractionalized by limiting the number of Directors of Custody Operations at each facility and not being able to advance to any further uniformed position. Captain Polyi states that the organizational structure should be based on the Special Investigations Division (SID) model, where the Principal Investigator works in liaison with the Administrator, but answers to an Assistant Chief of SID at Central Office, who in turn answers to the Chief of SID. He also states that the removal of an entire rank would completely destroy the opportunity for advancement and that his proposal would enhance the paramilitary structure of the DOC. Captain Polyi details how the expanded rank structure he has proposed would enhance morale and asserts that the current proposal would be counterproductive to streamlining, oversight and accountability.

It is noted that in accordance with *N.J.A.C.* 4A:3-3.3(f), the DOC provided NJLECOA with notice of the request for a new title on September 8, 2011.

CONCLUSION

Initially, NJLECOA premises many of its objections on the basis that the DOC is attempting to “break” the recently recognized union representation for the Directors of Custody Operations by seeking the instant title consolidation. Similarly, Senator Weinberg, Assemblyman Johnson, and Assemblywomen Huttel and Wagner question whether the consolidation of these titles is intended to do an “end run” around the collective bargaining process and eliminate unionized positions. However, the matter of retaliation for protected union activity and allegations of anti-union animus are issues that would properly be adjudicated before PERC since the Commission does not have jurisdiction over alleged violations of the New Jersey Employer-Employee Relations Act. *See N.J.S.A.* 34:13A-1, *et seq.* Therefore, the Commission will not consider those arguments. The only matter before the Commission is if the DOC’s request for consolidation complies with Civil Service law and rules.

NJLECOA requests a hearing in this matter. Approvals of changes to the State Classification Plan are treated as reviews of the written record. *See N.J.S.A.*

11A:2-6b. Hearings are granted in those limited instances where the Commission determines that a material and controlling dispute of fact exists which can only be resolved through a hearing. *See N.J.A.C. 4A:2-1.1(d)*. No material issue of disputed fact has been presented which would require a hearing. *See Belleville v. Department of Civil Service*, 155 N.J. Super. 517 (App. Div. 1978).

N.J.A.C. 11A:3-1 states that the Commission shall assign and reassign titles among the career service, senior executive service and unclassified service. In this role, the Commission shall:

- a. Establish, administer, amend and continuously review a State classification plan governing all positions in State service and similar plans for political subdivisions;
- b. Establish, consolidate and abolish titles;
- c. Ensure the grouping in a single title of positions with similar qualifications, authority and responsibility;
- d. Assign and reassign titles to appropriate positions; and
- e. Provide a specification for each title.

In accordance with this statutory authority, *N.J.A.C. 4A:3-3.3(a)2* specifies that the Commission shall establish new titles, abolish unnecessary titles, and consolidate titles where a single title is appropriate for the grouping of positions with similar qualifications, authority and responsibility. In order to carry out this mandate, it is necessary for this agency to rely on input from impacted appointing authorities to ensure that any resultant new, abolished or consolidated title will provide the most effective use of human resources to carry out the duties the Legislature has delegated to it. Thus, this agency requires appointing authorities in State service to comply with specific criteria when they request the establishment of a new title. In pertinent part, *N.J.A.C. 4A:3-3.6(b)* states that requests for new titles or title series must be submitted in writing by the appointing authority and such requests must include:

- 1. A detailed explanation of why the new title is needed and why an existing title cannot be use or specification modified;
- 2. Designation of any title to be abolished or replaced; and
- 3. Any other information requested by [this agency].

If this agency determines that there is a need for a new title or title series, a new job specification will be prepared and in State service, the title will be evaluated for compensation purposes. *See N.J.A.C. 4A:3-3.6(c).*

In compliance with *N.J.A.C. 4A:3-3.6(b)*, the DOC submitted a detailed explanation of how its operations would be enhanced by the creation of the Correction Major title. Further, it detailed how its operations would be improved by consolidating the existing titles of Director of Custody Operations 1, Director of Custody Operations 2, and Correction Captain into the single title of Correction Major. A review of the job definitions for Director of Custody Operations 1 and Director of Custody Operations 2 indicates that incumbents *supervise* the custody work force in an institution housing a particular number of inmates, and maintain discipline among the inmates residing therein and among those assigned to satellite units. According to the job definition for Correction Captain, an incumbent *assists in the overall supervision* of the custody workforce and is responsible for insuring the care, custody, and discipline of the inmates. Thus, the only real distinction between the two title series is that a Director of Custody Operations, or "Chief," is the single highest level custody staff member in a facility who is responsible for the supervision of the entire custody workforce while the Correction Captain can "assist in the overall supervision of the custody workforce." In fact, the job specification for Correction Captain indicates that an incumbent can act in the place of the Director of Custody Operations in his or her absence.

Based on its evaluation, the DOC has determined that its current organizational structure could be streamlined and efficiencies created by consolidating the Director of Custody Operations and Correction Captain titles into a single Correction Major title. In essence, it appears that what the DOC is attempting to do is eliminate one layer of management in its organizational structure by creating specific lines of accountability for custody issues to the Correction Major assigned to custody and accountability for administrative issues to the Correction Major assigned to administration. The Commission is mindful that administrative agencies, such as the DOC, have wide discretion in selecting the means to fulfill the duties the Legislature has delegated to them. Further, deference is normally given to an agency's choice in organizing its functions, considering its expertise, so long as the selection is responsive to the purpose and function of the agency. *See In the Matter of Gloria Iachio*, Docket No. A-3216-89T3 (App. Div., January 10, 1992).

Although NJLECOA and Captain Polyi do not agree with the benefits of the proposed reorganization and Senator Weinberg, Assemblyman Johnson, and Assemblywomen Huttel and Wagner question what the consolidation of these titles will accomplish as well as its intent, neither they nor the Commission has standing to dictate to the DOC what would be its best organizational structure. As noted earlier, this is a function best left to the DOC, or any other agency attempting to

carry out its legislative mandate. When classifying the kinds of employment and in providing designations for those engaged in various classifications, the only requirement for the Commission when it exercises its broad reclassification powers is to ensure that such action is not arbitrary, capricious, or unreasonable. *See Mullin v. Ringle*, 27 N.J. 250 (1958); *Carls v. Civil Service Commission*, 17 N.J. 215 (1955). In *Carls*, *supra*, the Court found that incumbents in the “Principal Examiner” title in the Department of Banking and Insurance had no vested rights in such classification and were at all times subject to the broad reclassification powers of the Commission and could be reclassified as “Examiners II.” In this case, the DOC is reorganizing its structure in order to be responsive to its purpose and function. It has determined that the current way it is organizing its functions is not responsive to its needs and requires restructuring. As part of its restructuring, the DOC has presented to this agency that it no longer has a need for a classification that supervises the custody work force and another that assists in the overall supervision of the custody workforce. Rather, it needs higher level managerial staff in the custody workforce chain of command to provide oversight of subordinate custody employees.

Eliminating the levels of supervision and management within an organization to create efficiencies in the delivery of its services is not an unusual approach to better manage an organization. For example, on August 4, 2010, the Commission adopted a change in the State Classification Plan that was requested by the Motor Vehicle Commission (MVC) to restructure its Supervisor, MVC title series. Prior to the restructuring, the MVC utilized a four-level series to provide supervision over staff providing front-line and behind-the-scene customer and other support services. After an extensive study of its functions and operations, the MVC determined that two levels of supervision would be sufficient. Therefore, the MVC requested the elimination of one supervisory level title and consolidation of one level into an existing title. The MVC explained that its proposed new title structure would more accurately reflect how work is assigned and processed at the MVC. Accordingly, the Commission approved the restructuring of the Supervisor, MVC title series. Moreover, the Commission has approved numerous consolidations and elimination of State and local government titles in an effort to provide appointing authorities with the tools they need to effectively manage their operations. For example, at today’s meeting, the Commission approved the ultimate inactivation of the General Supervisor Sewers title used in local service, one of two supervisory titles in the Sewer Maintenance title series, since local governments were primarily using only one supervisory title in that series.

Additionally, the Commission does not find NJLECOA’s argument convincing concerning potential problems with the chain of command by eliminating the Director of Custody Operations titles. For example, prior to a rule change in September 2003, the rule governing promotional title scopes for local service examinations required that the examination be open to the next lower or next two

lower in-series titles or to all applicants in the unit scope who met the open competitive requirements and all applicants in the next lower or next two lower in-series titles. Thus, since the paramilitary title series of Police Officer consisted of Police Officer, Police Sergeant, Police Lieutenant, Police Captain, Deputy Police Chief, and Police Chief, a promotional examination for Police Chief was required to be open to incumbents in the Deputy Police Chief and Police Captain titles. However, many local government jurisdictions did not utilize the Police Captain or Deputy Police Chief titles. Accordingly, numerous petitions were filed to the former Commissioner of Personnel from appointing authorities on behalf of their public safety communities requesting that this rule be relaxed in order to narrow the title scope for a specific announcement only to include Police Lieutenant. *See In the Matter of Police Chief, Borough of Magnolia* (Commissioner of Personnel, decided August 14, 2002). In September 2003, this rule was amended, in large part due to the concerns of the public safety community, to permit promotional examinations to be announced to the next lower in-series or next two lower in-series titles used in the local jurisdiction. *See 35 N.J.R. 2389(a)*. In other words, different paramilitary organizations utilize different chain of command structures in order to carry out the functions of their specific agencies.

In the instant matter, the Commission is satisfied that the DOC's submission in support of its request is not arbitrary, capricious, or unreasonable. Similar to the MVC, the DOC has studied its organizational structure and determined that it did not need three titles that were responsible for the overall supervision of custody staff. Therefore, it is appropriate to create the title of Correction Major to consolidate comparable functions performed by incumbents in the Director of Custody Operations 1, Director of Custody Operations 2, and Correction Captain titles. It must be emphasized that the new Correction Major title will also be assigned to the *career service* and all incumbents in the Director of Custody Operations 1, Director of Custody Operations 2, and Correction Captain titles will be laterally appointed to Correction Major the first full pay period 45 days after the adoption of this action by the Commission. Further, the title of Correction Major will be assigned the single rate salary range of 99 and compensation will be set at the single rate of \$116,000. Incumbents appointed laterally to the new title whose salaries are over the salary for Correction Major will be "red-circled" at their current salary until such time as the Correction Major salary exceeds their present one. Thus, no incumbent will lose pay as a result of this action. Once all incumbents have been laterally transferred, the titles of Director of Custody Operations 1, Director of Custody Operations 2, and Correction Captain will be inactivated.

A few additional matters warrant comment. NJLECOA claims that it is incumbent upon the DOC to demonstrate that the abolition of the Correction Captain and Directors of Custody Operations titles is for reasons of economy and efficiency. The Commission disagrees. As stated above, although it seeks technical

input from appointing authorities to *assist in the process*, this agency, *not* the DOC or any other State or local appointing authority, has the statutory authority to establish, consolidate, abolish, and reassign titles. *See N.J.S.A. 11A:3-1*. On the other hand, if positions were targeted for layoff for reasons of economy and efficiency, an appointing authority would be required to demonstrate that its targeting of those positions was done in good faith for reasons of economy and efficiency. The instant matter does not involve a layoff. Rather, incumbents in the Directors of Custody Operations and Correction Captain titles will be laterally appointed to Correction Major and their salaries will be red-circled.

With respect to NJLECOA's claim that the DOC has failed to make appointments from the existing Director of Custody Operations 1 (PS7785I), (PS0315I), and (PS4781I) lists to fill vacant positions, there is no Civil Service regulatory or other authority which requires an appointing authority to fill vacant positions. *See In the Matter of Gertrude Remsen, Department of Human Services*, Docket No. A-1126-96T3 (App. Div. January 17, 1997). With respect to the assertion that individuals have been performing the duties as an "Acting Chief," as noted earlier, the job specification for Correction Captain permits an incumbent to fill in for the Director of Custody Operations. Additionally, if any individual had been performing acting duties on a long-term basis, he or she could have filed an appeal of the classification of his or her position with SLO in accordance with *N.J.A.C. 4A:3-3.9*. In this regard, it is noted that by letter dated September 2, 2011, NJLECOA requested that this agency review a Step 2 grievance decision wherein one of its members claimed that the DOC provisionally appointed three Correction Captains as "Acting Chiefs" but was not making appointments from the eligible list. The grievance determination indicated that the DOC had not made any provisional appointments to Director of Custody Operations 1. A review of agency records confirms that the DOC has *not* provisionally appointed anyone to the title of Director of Custody Operations 1. However, this matter was referred to SLO for review of the proper classification of the three positions. Although a determination has not yet been made regarding the proper classification of these positions, if SLO finds that the positions would properly be classified as Directors of Custody Operations 1, the DOC would be required to provisionally appoint the employees to the title or to remove those duties. If the DOC provisionally appoints the individuals as Directors of Custody Operations 1 based on a classification review of the positions, the eligible list would be certified against those positions. However, since the Commission has approved the requested change in the State Classification Plan, that matter appears to be moot.

ORDER

Therefore, the Civil Service Commission approves the change in the State Classification Plan attached to this decision.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.